

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2963 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHANTILAL M UPADHYAY

Versus

D.S.P

Appearance:

1. Special Civil Application No. 2963 of 1989
MR YN OZA for Petitioner
MR HD DAVE, AGP, for Respondents
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 07/02/2003

ORAL JUDGEMENT

In instant petition filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus, or a writ of certiorari, or any other

appropriate writ, order or direction to quash order dated November 29, 1988, passed by the District Superintendent of Police, Vadodara Rural, District : Vadodara, by which the petitioner is dismissed from service, as well as order dated April 21, 1989, passed by the Deputy Inspector General of Police, Vadodara Range, Vadodara, by which the appeal filed by the petitioner against order of the District Superintendent of Police is dismissed.

2. In the year 1983, the petitioner was discharging duties as Unarmed Head Constable at Dabhoi Police Station and was incharge of M.Case No. 58 of 1983, which was registered against (i) Kantibhai Bakorbhai, (ii) Chimanbhai Bhagwanbhai, (iii) Manubhai Shivabhai Solanki, (iv) Abdul Kadar Adamabhai and others for the offences punishable under Sections 452, 323, 504, 506 & 114 of the Indian Penal Code. During the course of investigation, complaints regarding misconduct of the petitioner were received. As per the complaints, (i) the petitioner had demanded a sum of Rs.700/-as illegal gratification from Kantibhai Bakorbhai on June 25, 1983, but had agreed to accept Rs.500/-and in fact, accepted Rs.300/-as illegal gratification; (ii) he had demanded a sum of Rs.1000/-from accused Chimanbhai Bhagwanbhai for not arresting him and permitted him to go away without effecting his arrest, as a result of which, Chimanbhai had absconded and was successful in obtaining anticipatory bail; (iii) on June 25, 1983, the petitioner had created a forged documentary evidence i.e. panchnama, though the panch witnesses were not present; (iv) on June 25, 1983, the appellant had gone to village Banaiya in the company of accused of M.Case No. 58 of 1983 Via. Bhilapur, but had not made necessary entries in the relevant diary; (v) he had demanded a sum of Rs. 500/- as illegal gratification from accused Manubhai Shivabhai Solanki, but the said accused had refused to pay the amount demanded by the petitioner; (vi) another accused of the said case, namely, Abdul Kadar Adamanbhai Kadivala and accused Kantibhai Bakorbhai were present at the S.T.Stand of village Bhilapur, but, instead of effecting their arrest, the petitioner had demanded the remaining amount of Rs.200/- from Kantibhai and permitted accused Abdul Kadar Adamanbhai Kadivala to go, as a result of which he had also obtained anticipatory bail.

3. On the basis of the complaints, it was decided to initiate departmental inquiry against the petitioner and the petitioner was served with chargesheet. The competent authority had appointed Mr.A.M.I.Khan, the then Deputy District Superintendent of Police, Vadodara Rural, Vadodara, as Inquiry Officer. Before the Inquiry

Officer, 8 witnesses were examined on behalf of the department, and documentary evidence was also produced to substantiate the charges. The petitioner was permitted to cross-examine the witnesses examined by the department, and had examined defence witnesses. On appreciation of evidence, the Inquiry Officer concluded that all the charges levelled against the petitioner were proved, and forwarded his report to the competent authority viz. District Superintendent of Police, for necessary action.

4. On receipt of the report, the report was considered by the competent authority, and as the competent authority was inclined to agree with the conclusions arrived at by the Inquiry Officer, a notice dated October 27, 1988 was served on the petitioner calling upon him to show cause as to why he should not be dismissed from service. It may be stated that the petitioner was also supplied with a copy of the report of the Inquiry Officer.

5. The show-cause notice was challenged by the petitioner by way of filing Special Civil Application No. 7540 of 1988, but, ultimately the same was rejected. The petitioner had shown cause to the notice issued by the District Superintendent of Police, but, by an order dated November 29, 1988 the petitioner was dismissed from service by the District Superintendent of Police. The said order is produced at Annexure-A to the petition. Thereupon, Special Civil Application No.8206 of 1988 was instituted by the petitioner challenging the order passed by the District Superintendent of Police. The Division Bench of this Court directed the petitioner to make representation to the Deputy Inspector General of Police and also directed the Deputy Inspector General of Police to consider the same sympathetically vide order dated April 4, 1989. In view of the directions of the High Court, the petitioner preferred departmental appeal as contemplated by the provisions of the Bombay Police Act, 1951 and the Rules framed thereunder. The Deputy Inspector General of Police, Vadodara Range, Vadodara, rejected the appeal by an order dated April 21, 1989, which has given rise to the present petition.

6. I have heard the learned counsel for the petitioner and taken into consideration the documents forming part of the petition. The first contention that the complainant had given complaint after one month and, therefore, the same should not have inspired confidence of the departmental authorities, cannot be accepted. The evidence of the complainant and other witnesses has been

subjected to critical analysis by the Inquiry Officer and found acceptable. As such the complainant and other witnesses had no personal grudge against the petitioner and would not depose falsely against the petitioner. When the evidence of the complainant and other witnesses has inspired confidence of the authorities below, this Court cannot substitute their satisfaction by holding that it should not have inspired their confidence. Therefore, the first contention is rejected. The second and last contention that there is no evidence to connect the petitioner with the misconduct is merely stated to be rejected. The depositions of the witnesses examined by the department and the documentary evidence produced clearly show that there is sufficient evidence to connect the petitioner with the misconducts. As is evident, six serious charges were levelled against the petitioner, which have been found to be proved at the departmental inquiry. There is no breach of any of the principles of natural justice inasmuch as the petitioner was afforded ample opportunity to defend himself and in fact, had defended himself by examining defence witnesses. Further, not only he was permitted to cross-examine the witnesses examined by the department, but was also permitted to file further written statement in the matter after recording of evidence before the Inquiry Officer had concluded. Under the circumstances, it is difficult to hold that the principles of natural justice were not followed while conducting departmental inquiry against the petitioner.

7. The report of the Inquiry Officer runs into 24 pages and indicates that all the aspects of the matter were considered by him. The order of the competent authority dismissing the petitioner from service is also a reasoned one and indicates that all the material aspects were taken into consideration before imposing punishment. Further, the petitioner had not been successful in establishing that the competent authority viz. District Superintendent of Police, who had imposed punishment of dismissal from service, had any bias or malice against the petitioner. Under the circumstances, the findings recorded by the competent authority, which are confirmed by the appellate authority, are not liable to be interfered with in the present petition which is filed under Article 226 of the Constitution. In *Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd.* and another, (1999)¹ SCC 566, the Supreme Court has ruled that High Court while exercising jurisdiction under Articles 226 & 227 of the Constitution cannot act as a Court of appeal and only patent error of law as found from the orders of the authorities below could be

corrected in exercise of its writ jurisdiction. Again, in Apparel Export Promotion Council v. A.K.Chpra, (1999)1 SCC 759, the Supreme Court has ruled that findings of fact, recorded during the course of departmental inquiry, normally should not be interfered with by the High Court under Article 226 of the constitution, unless such findings are based on no evidence or were wholly perverse and/or legally untenable. What is explained by the Supreme Court in the said decision is that the High Court cannot function as an appellate authority and substitute its own conclusion as to the guilt of the delinquent on review of evidence led at the departmental inquiry because according to the Supreme Court, question of adequacy of evidence is outside the purview of High Court under Article 226 of the Constitution. The learned counsel for the petitioner could not satisfy the Court that the findings recorded at the departmental inquiry are based on no evidence or were wholly perverse and/or legally untenable. Therefore, having regard to the limited scope of interference available to the High Court under Article 226 of the Constitution, the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs. Interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

(patel)